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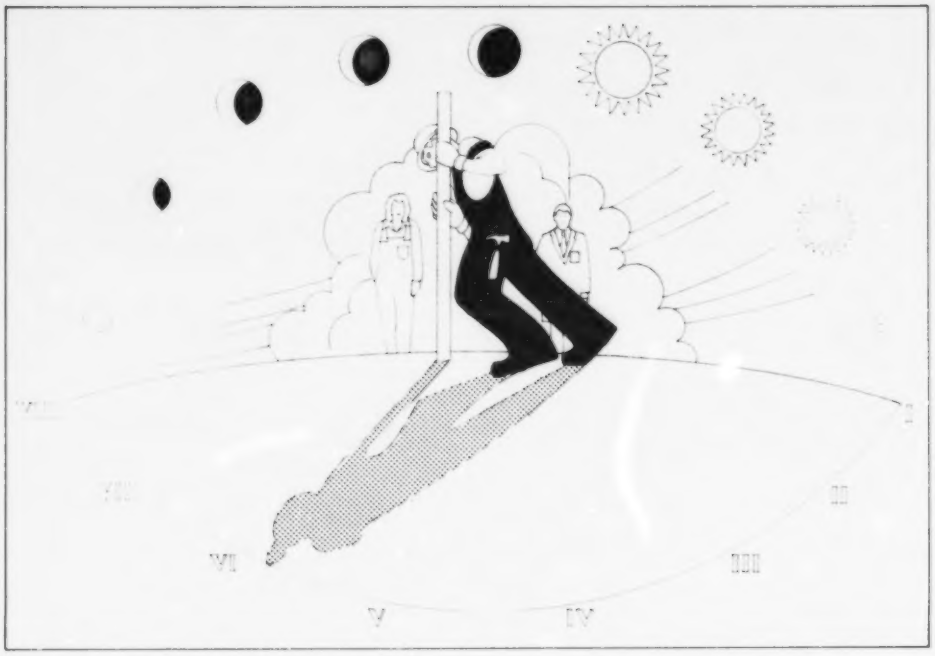

Construction Workers and Worktime Provisions of Ontario's Employment Standards Act

CONSTRUCTION WORKERS AND WORKTIME PROVISIONS OF ONTARIO'S EMPLOLYMENT STANDARDS ACT

by

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(A Report Prepared for the Ontario Task Force on Hours of Work and Overtime)

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The views expressed in this report are those of the author and need not reflect the position of the Ontario Task Force on Hours of Work and Overtime.

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CONSTRUCTION WORKERS AND WORKTIME PROVISIONS OF ONTARIO'S EMPLOYMENT STANDARDS ACT

INTRODUCTION

The original intent of legislation limiting hours of work (e.g., the Ontario Factories Act, 1884) was to protect the health and safety of women and children. In the intervening years, the emphasis appears to have shifted from health and safety to promoting worksharing and protecting employees with little bargaining power. Phase I of the Task Force inquiry examined the broad question of whether legislative changes to restrict hours of work and overtime would create employment opportunities for the unemployed. In Phase II, the Task Force commissioned case studies of industries which possessed unique characteristics and had been exempted from and/or received special treatment under the Employment Standards Act. As part of Phase II, this study examines the special characteristics of the construction industry and considers the efficacy of the existing statutory framework for promoting the objectives of the worktime provisions of the Act.

INDUSTRY DESCRIPTION

Statistics Canada defines construction "as the creation, renovation, repair, and demolition of immobile structures and the alteration of the natural topography of the ground" (Statistics Canada, 1986a, p. 5). When we speak of construction employers, the reference is to businesses engaged in building and related activities. Businesses

incidental to or which supply construction materials, e.g., concrete, do not form part of the construction industry.

The construction industry is pivotal to economic growth and development. In 1985, construction activity amounted to $61.4 billion or 13 per cent of Gross Domestic Product (Statistics Canada, 1986a). The product market is characterized by ease of entry, competitive bidding and numerous construction firms (80,000), most of which are small. In terms of profit variability and leverage (debt-equity ratios), construction is regarded as substantially riskier than most other major industries (Keys and Caskie, 1975).

Construction also is a volatile sector which is extremely sensitive to changes in the level and rate of investment (Auer, 1975). Not all economic stimuli have the same impact on each segment of construction activity. Residential construction is heavily influenced by interest rate changes, whereas nonresidential work is related to general business expectations and roadbuilding is tied to government decisions (Jenness, 1975). In 1985, total public spending on construction activity exceeded $19 billion or about 31 per cent of the value of construction work undertaken (Statistics Canada, 1986b).

The industry can be divided into a number of sectors, each of which has unique characteristics. Although there is no universally-accepted classification system or clear dividing line separating sectors, s. 117(e) of the Ontario Labour Relations Act identifies seven sectors.

> "sector" means a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and watermains sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector;

Diversity across sectors exists with respect to the organization of construction firms, degree of unionization, technological characteristics and staffing requirements.

As noted above, some sectors of the industry are dependent on government expenditures. According to figures in Table 1, expenditures by the three levels of government accounted for 89.5 per cent of total roadbuilding expenditures and 76.5 per cent of the total expenditures for sewers and waterworks. Provincial governments accounted for 62 per cent of government spending on road construction and municipal governments accounted for 66 per cent of government spending on sewers and watermains. Whereas, these two sectors comprise a modest proportion of total construction industry expenditures (about 10 per cent), they account for a substantial share (68 per cent) of total construction expenditures by municipal and provincial governments (Statistics Canada, 1986a).

The construction industry requires a highly specialized, mobile and flexible labour force. This labour force consists of no fewer than 15 crafts and many more specialty subtrades (Mills, 1972). The combination of seasonal, cyclical and frictional factors "make the

TABLE 1: GOVERNMENT CONSTRUCTION

EXPENDITURES FOR ROADS AND WATERWORKS

AND SEWAGE SYSTEMS, 1985

	Federal Government	Provincial Governments	Municipal Governments	Governments as a percentage of total expenditures
		(000's)		
Roads	$180,541	$2,742,725	$1,065,350	89.5%
Sewers	$ 86,674	$ 125,337	$1,430,250	76.5%
Roads and Sewers as a percentage of total government construction expenditures	15%	71%	65%	

(Source: Statistics Canada, Construction in Canada, 1984-1986, pp. 40-44)

construction labour market perhaps uniquely subject to irregular and intermittent employment" (Foster and Strauss, 1972, p. 292). Because the labour force is mobile among job sites, across local labour markets, and between construction and other industries, employer-employee relationships lack the permanency found in most sectors of the economy. Construction unions play a key role in the labour market through collective bargaining, e.g., establishing area-wide wage rates and contract provisions regulating hiring, work jurisdiction and subcontracting, and policies governing entry into the industry (Mills, 1972).

Although there are no precise union density figures for Ontario construction, the industry is generally regarded as one of the most unionized sectors in the economy. Unionization is more heavily concentrated in urban areas and in major building construction, i.e., the industrial, commercial and institutional sector. Most employers belong to associations which act as their bargaining agents in contract negotiations. Nonunion construction is more commonly found in remote geographic areas, the residential sector and maintenance work.

HOURS OF WORK AND OVERTIME

An indication of the pattern of hours worked and overtime can be derived from earlier Task Force studies (Robb and Robb, 1987 and Reid, 1987). The principal data sources are the 1985 Statistics Canada Labour Force Survey (LFS) and the Survey of Employment, Payrolls and Hours (SEPH). The LFS is a household survey covering both wage and salary earners, whereas the SEPH survey covers

employers and is limited to hourly paid workers. Notwithstanding these and other differences (i.e., differences related to overtime), the survey results are roughly comparable.

According to the LFS, an increasing proportion of workers are working long hours, i.e., in excess of 48, 44 and 40 hours. Between 1975 and 1985, the proportion of workers who worked in excess of 40 hours increased from 18.8 per cent to 22.6 per cent; the proportion working over 44 hours rose from 15.3 per cent to 17.8 per cent and the proportion working over 48 hours rose from 8.4 per cent to 11.4 per cent.

In 1985, the construction industry had the second highest incidence of long hours (next to agriculture) and the construction figures exceeded the average for all employees. The proportion of construction workers with over 40 hours was 31.7 per cent; with over 44 hours, 26.7 per cent; and with over 48 hours, 18.7 per cent (the all-employee averages were 22.6 per cent, 17.8 per cent and 11.4 per cent, respectively) (Reid, 1987). Of the construction employees working in excess of 40 hours per week, 84 per cent worked more than 44 hours per week and 59 per cent worked more than 48 hours per week (the all-industry averages were 70 per cent and 45 per cent, respectively). Put somewhat differently, if we define long hours as all hours worked exceeding 40 in a week, the percentage of long hours in construction exceeding 44 hours in a week was 71 per cent and the percentage of long hours exceeding 48 in a week was 47 per cent. However, owing to the industry's relative size, it accounted for a modest 8 per cent of total long hours employment.

An examination of the LFS and SEPH data, enables us to compare average weekly hours and overtime in construction. According to the LFS, construction workers averaged 39.9 hours per week or three hours more than the all-industry average. The construction industry tied for third in average weekly hours (with manufacturing) behind agriculture and other primary industries. Turning to the SEPH data, we find that hourly paid construction workers averaged 37.5 hours per week excluding overtime and 38.7 hours per week including overtime. Both figures exceeded the all-industry average of 32.1 and 33.1 hours, respectively, but construction workers averaged fewer weekly hours than their counterparts in forestry, mining and manufacturing.

As for overtime, the 1985 LFS and SEPH data report construction workers averaged 1.0 and 1.1 overtime hours per week, respectively. It should be noted that the overtime or extra hours reported in the LFS is not "a pure measure of overtime work since it includes extra hours as well as overtime, unpaid as well as paid work, and relates to all jobs rather than the main jobs only" (Reid, 1987, p. 21). The LFS does, however, reveal that the incidence of overtime (the number of persons working overtime or extra hours as a percentage of paid employment) and average duration of overtime (average weekly overtime hours or extra hours worked by persons who worked overtime) changed over time. Between 1975-1982 and 1983-1985, the incidence of overtime increased from 11.3 to 12.4 per cent and the average duration of overtime grew from 8.1 to 8.2 hours. As a result, average overtime hours per person employed rose from 0.92 to 1.02 hours.

An inter-industry comparison of 1985 LFS data reveals the construction industry experiences relatively modest levels of overtime or extra hours. The incidence of overtime was 11.7 per cent and the average duration of overtime was 9.0 hours per week for those who worked overtime. As a result, the average weekly hours of overtime per person employed in construction was 1.05 hours per week. With the exception of average duration of overtime, construction figures were slightly below the all-industry and manufacturing average.[1] It is worth emphasizing that whereas construction had the second highest incidence of long hours, its incidence of overtime ranked sixth among industry groups.

Industry rankings of SEPH overtime data are broadly similar. The construction industry ranked fifth in average weekly overtime hours (1.1 hours) and fourth in overtime hours as a percentage of total hours (2.8 per cent). These figures were roughly comparable to the all-industry figures of 1.0 hours and 3 per cent.

The SEPH data reveal an increase in the average weekly overtime hours between 1983 and 1985. The all-industry average (excluding agriculture) was 0.90 hours in 1983, 0.97 hours in 1984 and 1.03 hours in 1985. There were substantial variations in overtime trends across industries, with the construction industry recording a relatively large increase in average weekly overtime hours (from 0.81 hours in 1983 to 1.14 hours in 1985 or 41 per cent). In some industries, there were increases in average overtime in 1984 followed

by declines in 1985 (e.g., transportation and communication and forestry).

Summarizing, the pattern of hours of work and overtime reveals that the construction industry is characterized by (1) a relatively high incidence of long hours, and (2) relatively modest levels of overtime or extra hours. This indicates that while the incidence and average duration of overtime is not substantial in absolute or relative terms, those construction workers who do work overtime tend to work longer overtime hours than the average Canadian worker. This undoubtedly is a reflection of the cyclical, seasonal and frictional nature of construction work and the scheduling requirements of the industry.

STATUTORY FRAMEWORK GOVERNING HOURS OF WORK AND OVERTIME

Employment Standards Act

With respect to hours of work and overtime regulations, the construction industry is treated differently from the general pattern. Part IV of the Employment Standards Act (Hours of Work) provides in s. 17 that "the hours of work of an employee shall not exceed eight in the day and forty-eight in the week". Exceptions to the general practice are outlined in ss. 18 to 20 to cover extenuating circumstances. Such exceptions normally require the prior approval or authorization of the Director of Employment Standards. The construction industry has been exempted from Part IV of the Act by virtue of Regulation 285, s. 4(d).

Part VI (Overtime Pay) of the Act stipulates that an employee shall receive a minimum overtime rate of one and one-half times the regular wage rate for each hour of work in excess of 44 hours in any week. Whereas most of the construction industry is covered by Part VI, special provisions exist in two sectors of the industry. In roadbuilding, the time and one-half overtime rate is required for each hour of work in any week exceeding 55 hours for employees engaged in street, highway and parking lot work, and 50 hours for employees engaged in related structures, such as bridges and tunnels (Regulation 285, s. 16(1)). There is also a provision whereby employees working fewer than the 55 or 50 hours in a particular week, will have their shortfall in hours (to a maximum of 22 hours) carried over to the immediately following calendar week and will be paid at the straight-time rate for those hours. In sewers and watermains construction, the overtime rate of time and one-half applies to all hours worked in excess of 50 in any week (Regulation 285, s.17(5)).

Other Relevant Statutes and Orders in Council

The Employment Standards Act is not the only statute regulating hours of work and overtime in the construction industry. The Fair Wages and Hours of Labour Act and the Ontario Government Contracts Hours and Wages Act were designed to develop schedules for wages and hours on construction projects financed (or subsidized) by the federal and Ontario governments, respectively. The rationale for such laws is to "ensure that government contracts do not undermine the wage rates paid in the locality where the work is done..." (Foster and Strauss, 1972, p. 304). Given the volume of publicly financed construction work, it is not surprising that the federal and provincial

governments have enacted legislation (or issued Orders in Council) to "impose certain minimum conditions, especially regarding wages and hours of work" (Hebert, 1968, p. 272).

The federal schedules are based on prevailing conditions established under collective agreements. Standard hours are defined as 8 in a day and 40 in a week, after which an overtime premium of time-and-one-half must be paid. In Ontario, the Employment Standards Branch does not use the Government Contracts Hours and Wages Act, but relies on a 1965 Order in Council (OC-166/65) to establish fair wage and hour schedules. A total of 37 schedules are prepared on the basis of collective agreements and area wage surveys. For general construction, the province is divided into 27 zones (which correspond to county lines except in Northern Ontario); for roadbuilding and sewers and watermains, there are five zones covering four urban areas (Ottawa, Toronto, Hamilton and Windsor) and one provincial district covering the rest of the province.

Under OC-166/65, standard hours in general construction have been set at 8 per day and 44 per week, after which an overtime premium of time-and-one-half must be paid.

> 3. (1) Except in cases of emergency as may be approved by the Ontario Housing Corporation, the Ontario Water Resources Commission or by the Minister of the contracting department concerned, the working hours of all persons in the employ of a contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by a contract to which this Order-in-Council applies shall not exceed eight hours per day or forty-four hours per week.

> (2) Every person in the employ of the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by such contract shall, except where the Minister of Labour otherwise orders, be paid for hours worked in excess of eight hours per day or forty-four hours per week at a rate of not less than one and one-half times the wages required to be paid under such contract.

Schedules for roadbuilding and sewers and watermains mirror collective agreement provisions and the Regulations to the Act, i.e., they specify an overtime rate of not less than time and one-half after 50 or 55 hours in a week, depending on the sector.[2]

One other statutory scheme merits brief mention. Many municipalities "may also indirectly determine hours of work by prohibiting noisy works during certain hours of the day or night" (Hebert, 1968, pp. 230-231). Admittedly, such municipal regulations have a greater impact on when work may be scheduled rather than on the quantum of hours. Nevertheless, such regulations could restrict an employer's ability to schedule multiple shifts as an alternative to overtime.

Rationale for Special Treatment

The blanket exemption of the construction industry from Part IV of the Act suggests there are general features of construction employment which cut across all sectors of the industry and require uniform and special treatment. However, the inclusion of the industry under Part VI of the Act, with separate provisions for the roadbuilding and sewers and watermains sectors, suggests there are

significant sectoral differences in employment patterns necessitating special treatment.

There are numerous aspects of construction scheduling and employment which makes it different from the conventional industrial model found in manufacturing. Construction activity is sensitive to cyclical, seasonal, and weather conditions. These factors make it difficult to schedule regular hours, and employers would incur higher costs if they did not have flexibility to work longer hours. In an unstable economic environment, construction employers "greatly value flexibility of operations" including the right to hire and lay off as economic circumstances warrant (Mills, 1972, p. 15). Unlike their counterparts in other sectors, construction workers and their unions have not negotiated elaborate seniority provisions and they generally accept lay offs as an occupational hazard. Because of the irregular and intermittent nature of work, unions attempt to establish high hourly wage rates. Workers are attracted to longer hours (when economic conditions are favourable) as a means of achieving greater income security (Foster and Strauss, 1972).

According to the Employment Standards Branch, the blanket exemption from Part IV of the Act recognizes the industry's unique characteristics and the need for flexible scheduling of work in various ways. First, construction work often is impeded by weather conditions; some structures must be winterized during warmer months to permit interior work during cold weather. Second, safety considerations may necessitate that work must be completed to ensure that a structure is not left in an unsafe condition. Third, certain

operations (e.g., concrete pours) must be scheduled on a continuous basis without interruption. Fourth, since contractors cannot anticipate and control deals, there is a need for flexible hours. Fifth, most sectors of the industry are highly unionized (the notable exception is residential construction) and afford employees protection through collective bargaining.

Whereas the construction industry generally is governed by the overtime pay provisions found in Part VI of the Act, the roadbuilding and sewers and watermains sectors are treated differently. The rationale for special treatment appears to be three-fold. First, it reflects the prevailing overtime provisions found in collective agreements. These provisions are discussed in more detail later in this paper. Normally collective bargaining conditions are substantially better than minimum standards. In this case, since the parties to collective bargaining established a higher overtime trigger (time and one-half after 50 or 55 hours) than is generally found in the construction industry, this was considered an appropriate minimum or employment standard. Second, work scheduling is affected by weather conditions, seasonality and the need to conduct work during daylight. Consequently, it is often necessary to take advantage of favourable weather and longer daylight hours (e.g., summer) to schedule work. Third, any improvements in the overtime standards would be borne by major clients, in this case provincial and municipal governments.

Evaluating Exemptions and Special Treatment

Independent of the merits of the special treatment accorded the construction industry is the question of the impact of the Act on this sector of the economy. In its presentation to the Task Force, the Provincial Building Construction Trades observed that to its knowledge "the Employment Standards Act has no effect on construction trades and employers in the Province of Ontario". This statement undoubtedly reflects the reality in heavily unionized sectors of the industry, where collective agreements specify a shorter standard workweek and more generous overtime provisions than specified in the Act. However, the statement is unlikely to be accurate for nonunion employees. For example, the overtime trigger for union workers in general construction varies from 36 to 40 hours; for nonunion workers the overtime trigger ranges from 40 to 44 hours.

By far, the most comprehensive brief from the construction industry was a joint submission from the Ontario Road Builders Association and the Metropolitan Toronto Road Builders Association. The brief argues that the special treatment given to the roadbuilding sector is justified by: (1) seasonal factors which limit the working season to 7 to 8 months (less in Northern Ontario); (2) temperature factors which limit surface treatment to three months per year in Northern Ontario and four months in Southern Ontario; (3) inclement weather which impedes job progress and necessitates make-up time; (4) the impracticability of multiple shift scheduling given the remoteness of job sites, traffic and weather conditions; and (5) other factors, e.g., safety. The brief points out that because

roadbuilding creates employment security (an average of 2,000 hours of work per year per employee, with 90 per cent of the workforce returning each year), it "provides productivity, efficiency and stability to the industry" (Brief, 1986, p. B-1).

To these factors might be added other considerations relevant to the debate concerning efforts to enhance employment opportunities by restricting hours of work and overtime. Briefs submitted to the Task Force from construction employers' representatives favoured maintenance of the status quo and suggested that changes to the Act would not likely lead to a net increase in employment. It was noted, for example, that contractors must recruit skilled tradesmen (not just workers), who are often in short supply. Since a substantial amount of overtime is unplanned and beyond the employer's control, overtime often is scheduled at short notice. It also was noted that attempts to create employment through reduced overtime poses other risks. For example, it may be impossible to increase crew sizes or site employment where the work is limited to a confined space (e.g., tunnels) and where site overcrowding would result in unsafe conditions and inefficient operations. Furthermore, by restricting work scheduling and overtime, employers utilizing heavy equipment may not be able to maximize capital cost effectiveness.

There is no doubt that construction work possesses unique characteristics and, as such, merits special consideration. What is less readily understandable is why Ontario has chosen to provide special treatment when some other jurisdictions of Canada and the U.S. (discussed in section IV), confronted by the same set of unique

features, have not differentiated construction generally or subsectors in particular. Regarding the blanket exemption from Part IV of the Act, it would appear the industry persuaded the government of its uniqueness, its need for flexibility and that employee interests were being safeguarded by strong building trade unions. Why the government chose to accommodate the industry in this way (versus an industry permit) is unclear.

At first glance, the rationale for special treatment for roads and sewers and watermains may appear obscure. After all, the pipeline sector does not receive special treatment, yet it shares many of the work characteristics found in the roads sector, e.g., remoteness, adverse climatic conditions and heavy investment in capital equipment, and employs a more highly skilled workforce (in particular, welders). The absence of overtime exemptions for pipeline work appears to reflect the more generous collective agreement provisions in this sector and the large share of this work undertaken by the private sector. What the roads and sewers and watermains sectors have in common is a dependence on government financing and collective agreement terms that are less generous than generally found elsewhere in the industry. Thus, these sectors of the industry found it necessary to lobby the government that special treatment was justified because the parties themselves, in response to sectoral needs, had established through collective bargaining an overtime trigger exceeding the 44 hour standard in the Act. The pecuniary interests of the government can not be ignored as a motivator for special treatment.

A COMPARATIVE PERSPECTIVE

An examination of employment standards legislation elsewhere in North America reveals diversity in the treatment of the construction industry. In the United States, the Fair Labor Standards Act, as amended in July 1986, establishes a 40 hour standard workweek, with an overtime pay premium of 1.5 times the regular wage rate after 40 hours. The U.S. construction industry is covered by the general standard and no attempt appears to have been made to distinguish construction from other industries or differentiate among construction sectors (Lazar, 1987).

The statutory framework in Canada governing hours of work and overtime in the construction industry is complex. A study conducted nearly twenty years ago found that hours of work often

> are regulated by not less than four or five types of laws which, in certain cases, may apply together, with some inevitable contradictions between them. There may be an act pertaining to hours of work, a minimum wage order including the determination of a standard work day and workweek, a particular schedule under the Industrial Standards Act with similar provisions, a fair wage schedule in the case of a government contract, together with certain municipal by-laws prohibiting work during certain hours of the day or night (Hebert, 1968, p.278).

As well, it has been recognized that certain sectors of the industry, notably roadbuilding, have unique problems with respect to hours of work.

> Roadbuilding remains the most difficult sector. Some fair wage schedules (since roadbuilding is usually done for provincial governments) provide for a standard workweek of 55 or 60 hours, with Manitoba reducing the 60 hours to 48 during winter time. But conditions seem to be in many cases so difficult that even that rule may not be fully respected. This somewhat chaotic situation, in both practice and legislation, points to the difficulty and complexity of the problem (Hebert, 1968, p.281).

Although no attempt has been made to document all of the laws and regulations affecting the construction industry in Canada, the following examples provide ample evidence of the diverse approaches which exist.

- In Alberta, the Regulations exempt "highway and railway construction and brush clearing" from the employment standards legislation.

- In Saskatchewan, a statutory exemption exists for rural municipal employees engaged in road maintenance and construction, and other road construction workers.

- In New Brunswick, the Crown Construction Work Regulation establishes a different overtime trigger and premium for bridges, roads, culverts and drainage construction undertaken by the Crown. The overtime trigger is 50 hours per week and the premium is one and one-half times the <u>regular</u> wage rate. The New Brunswick Employment Standards Act requirement for industry generally (including building construction) is 44 hours per week and time and one-half the <u>minimum</u> wage.

- In Nova Scotia, the standard overtime trigger of 48 hours per week applies to the construction industry. An Order in Council allows averaging for roads construction, with overtime rates applying to all hours worked in excess of 96 in a two-week period.

- In Manitoba, the Construction Industry Wages ACt (CIWA) is the minimum wage and hour law in construction. Curiously, the CIWA is not referred to in the Manitoba Employment Standards Act (based on a conversation with Robert Moggey, Director of the Employment Standards Branch). The CIWA establishes five wage and hour schedules based on prevailing conditions; in some cases, the schedules establish higher daily and weekly overtime triggers than found in the Employment Standards Act (8 hours per day and 40 hours per week). For example, the heavy construction schedule (which includes roads and sewers and watermains construction) has an overtime trigger of 50 hours per week.

- In Quebec, the construction industry decree establishes daily and weekly overtime triggers of 10 and 50 hours, respectively for roads construction and 10 hours in a day and 45 hours in a week for sewers and watermains.

As this capsule review suggests, Canadian jurisdictions have adopted diverse approaches to hours of work and overtime in construction.

COLLECTIVE BARGAINING PERSPECTIVE

In this section, we will examine the impact of collective bargaining on hours of work and overtime. Collective agreement data are collected by the Research Branch of the Ontario Ministry of Labour (Ontario Ministry of Labour, 1983). Contract provisions on standard

daily and weekly hours and overtime premiums are provided for 36 geographic areas and are classified by trade (or craft) designation and sector. To determine the extent of mid-contract disputes over hours and overtime, construction arbitration data were examined. Virtually all grievance arbitration in the construction industry is handled by the Ontario Labour Relations Board (OLRB) pursuant to s. 124 of the Ontario Labour Relations Act. Summaries of OLRB arbitration cases, including the issue(s) in dispute and the outcome are reported in the Monthly Bulletin published by the Ontario Ministry of Labour's Office of Arbitration (Ontario Ministry of Labour, 1982-1985).

Collective Agreement Provisions

Unfortunately, summary data are not provided for construction industry collective agreement provisions. Accordingly, we selected a convenient sample consisting of four trade classifications (bulldozer operator, carpenter, electrician and labourer) in four sectors (industrial, commercial and institutional (ICI); residential; roads; and sewers and watermains) and 36 geographic areas. The data describe hours of work and overtime provisions in place in 1983 (many of the agreements were due to expire in 1984). While this approach is imperfect, it does nevertheless capture a broad cross-section of the hours of work and overtime provisions found in the industry.[3] A summary of collective agreement provisions appears in Appendix A, tables A1 - A8.

The 8-hour day is the norm in both ICI and residential sectors. The 8-hour day prevailed in 85 per cent of the geographic areas

covered by ICI contracts and 70 per cent of the areas for residential construction. Daily hours beyond 8 in a day were more frequent in residential construction (20 per cent) than in ICI construction (9 per cent). While the 40 hour week was the most common arrangement in both sectors, many geographic areas in the ICI sector specified a standard workweek of fewer than 40 hours (30 per cent). The most common arrangements called for four 8-hour days and one 4-hour day, or five 7.5-hour days. On the other hand, 20 per cent of the geographic areas covered by residential collective agreements called for a standard workweek of more than 40 hours, e.g., five 8.5-hour days or four 9-hour days and one eight-hour day.

Daily and weekly hours are normally longer in the roads and sewers and watermains sectors. Where daily hours were specified in collective agreements, they called for between 10 and 12 daily hours, with the 10 hour day being the most common arrangement. Approximately 17 per cent of the areas covered by sewers contracts and 38 per cent of the areas covered by roads contracts do not specify normal daily hours. Fifty or more hours of work per week is almost universal in both sectors, with approximately 95 per cent of the geographic areas covered by this arrangement.

The strongest overtime provisions from a union standpoint are found in the ICI sector. In most geographic areas (59 per cent) double time is required after the standard daily or weekly hours and in virtually all cases double time applies to Saturday, Sunday and holidays. Of the 59 areas which require an overtime premium of time and one-half, 43 (73 per cent) specify special premiums for excessive

overtime hours. In the other 3 sectors, time and one-half is the normal overtime premium for daily and weekly hours (although double time premiums are more prevalent in residential construction). Work on Saturdays, Sundays and holidays generally attracts a double time premium, the exception being Saturday in the roads and sewers and watermains sectors. Special provisions for excessive overtime hours were rare and were confined to residential construction.

In the pipeline sector, there is a single collective agreement covering 4 trades (welders, operating engineers, labourers and truck drivers). It defines a standard shift as 8 hours and a standard workweek as 40 hours. Employees who work in excess of 8 hours in a day and 40 hours in a week are paid at the rate of time and one-half the straight time rate. A double time premium applies to all hours worked in excess of 10 hours per shift and for work on Sundays and holidays. Since the normal workweek consists of six 10-hour shifts (Monday to Saturday), approximately one-third of the hours worked in this sector consist of overtime. Thus, like the roads and sewers and watermains sectors, pipeline workers normally work more than 48 hours in a week. At the same time, the overtime trigger is considerably lower in the pipeline sector.

Grievance Arbitration

Between February 1982 and July 1985, the OLRB decided 197 construction arbitration cases. Table 2 summarizes the issues giving rise to construction arbitrations. In contrast with the general pattern of arbitration cases in Ontario, which reveals that 55 to 60 per cent of all cases involve discipline/discharge and seniority

grievances (Swimmer, Gunderson and Hyatt, 1987), these issues comprise less than 8 per cent of the construction cases. By far, the most important issue in construction is collections, i.e., questions involving payment of wages, benefits and various allowances covered by the collective agreement. There were no reported cases falling under the subject headings hours or overtime. Given the casual nature of the construction labour market, it is not surprising that collections is the dominant issue and work scheduling and overtime issues (e.g., requiring the equitable distribution of overtime to bargaining unit members) are not major sources of grievance activity. However, it is worth noting that some of the cases listed as "collections" may actually involve disputes over overtime calculations and payments.

There also is a need to recognize that arbitration cases provide only a partial picture of mid-contract disputes. Approximately 87 per cent of the grievances filed with the OLRB were informally settled through mediation by labour relations officers (Ontario Ministry of Labour, 1980-81 to 1983-84). However, according to union and management spokespersons and OLRB personnel, most of these cases involve routine matters -- "the collection of wages, health and welfare payments, union dues, and so forth" (Rose, 1986, p. 36).

Most construction collective agreements provide little more than a definition of standard daily and weekly hours and establish overtime rates to cover all hours in excess of the daily and weekly

TABLE 2 - FREQUENCY OF CONSTRUCTION ARBITRATION CASES, 1982-1985

ISSUE	NUMBER OF CASES	PER CENT OF TOTAL
Collections	44	22.3
Wages, Premiums and Allowances	23	11.7
Collective Agreement	17	8.6
Discipline/Discharge	15	7.6
Procedure	15	7.6
Damages	11	5.5
Work Assignment	11	5.5
Arbitrability	10	5.1
Hiring Hall	8	4.1
Union Security	8	4.1
Other Issues*	35	17.9
TOTAL	197	100.0

* This includes fifteen separate issues ranging from procedural and jurisdictional matters (e.g., estoppel) to substantive matters (e.g., subcontracting and layoffs).

(Source: Ontario Ministry of Labour, Monthly Bulletin, May 1982-July 1985).

standard and for work on Saturdays, Sundays and holidays. Most contract provisions are simple and straightforward. In many of the provincial collective agreements in the industrial, commercial and institutional sector, there is variation in the hours and overtime provisions among local geographic areas. Collective agreements in construction rarely deal with issues such as the right to refuse overtime, the requirement for a equitable distribution of overtime, or restricting overtime if there are layoffs and worksharing.

In summary, construction employers and unions, unlike their counterparts in other sectors, have not constructed an elaborate web of rules to govern hours and overtime. Rather, they have focused on establishing standard hours (which in some collective agreements represent fewer than 40 hours per week) and overtime premiums which are generally more generous (double time) than found in the Employment Standards Act and many collective agreements outside the construction industry.

EMPLOYER AND UNION PERSPECTIVES ON HOURS OF WORK AND OVERTIME

In the absence of survey data based on a representative sample of contractors, unions, workers and owner-clients (i.e., the consumers or purchasers of construction services), it is difficult to express in broad and unambiguous terms the attitudes towards hours of work and overtime that prevail in the industry. Nevertheless, some impressionistic evidence can be given, based on indirect evidence from employer and labour organizations.

Three major sources of information were relied on: (1) briefs submitted to the Task Force; (2) transcripts of appearances before the Task Force; and (3) interviews with labour and management representatives from 7 industry groups (interviewees also completed a short questionnaire at the end of the interview sessions).[4] Although the views expressed by representative provincial organizations may not be indicative of the attitudes held by all associations, firms, trade unions and employees (union and nonunion), they do represent the best available information.

Attitudes Toward The Current Statutory Framework

The phrase that best captures the prevailing view of employers is "maintenance of the status quo". In the briefs, appearances and interviews, employer representatives expressed their general satisfaction with the current statutory framework. A summary of their position embraces the following principles.

1. The industry's blanket exemption from Part IV of the Act and the special treatment accorded the roads and sewers and watermains sectors under Regulation 285, ss. 16(1) and 17(5) is in recognition of the unique characteristics of building and construction work, e.g., scheduling needs and climatic conditions.

2. There is no evidence of dissatisfaction from any of the constituent groups within the industry in regard to the number of hours worked, the number of overtime hours, overtime triggers or overtime premiums.

3. No matter how socially desirable worksharing may be, the consensus was that alterations to the existing regulatory scheme would not create many new jobs.

4. There was a concern that any effort to deviate from the status quo would increase regulation and impose burdensome administrative costs.

The perspective of representatives of organized labour was very different. They expressed the view that the Employment Standards Act encourages building tradesmen to work longer hours and that employers and employees do not consider worksharing when overtime is scheduled and overtime is accepted. The failure to come to grips with overtime-employment tradeoffs has created numerous problems. They advocated worksharing as one means of luring new entrants into the industry. They felt this was essential since there is an aging workforce in numerous trades (e.g., the average age is 55 in some trades). New workers are impeded from entry into the building trades by the long hours that are worked by the incumbent workforce. It was suggested that double time overtime premiums, the mainstay in major building construction, was more of an inducement to work overtime than a penalty to discourage its use. The message was that higher overtime premiums, whether imposed by statute or collective bargaining, would not generate significant increases in employment. It was suggested that one way to discourage overtime would be to pay workers at or below their normal hourly wage rate for overtime hours.

Alternatives to the Status Quo

The interviews conducted with labour and management representatives in the construction industry were necessitated by the nature of the briefs and statements made in appearances before the Task Force. The thrust of these earlier inputs was to defend the status quo and argue against change. Little input was provided regarding the relative merits of alternative approaches to hours of work and overtime. The interviews were structured so that the respondents were required to assess a series of proposed changes to the Employment Standards Act developed by the author.

The interviews sought detailed responses to 4 broad questions.

(1) What would be your reaction if the construction industry's exemption was removed and the industry was brought under Part IV?

(2) What aspects of Part IV of the Act are acceptable? What aspects are objectionable?

(3) Could Part IV be modified to make it more acceptable (or less objectionable)?

(4) What would be your reaction to modifying Part VI of the Act to lower the overtime trigger and/or increase the overtime premium?

Following the interviews, respondents were given a list containing 12 possible ways in which the Employment Standards Act

could be modified (see Appendix B). Respondents were first asked to rate each of the proposed changes on a 5-point scale (from (1) very acceptable to (5) very unacceptable) and then to rank order the proposed changes from (1) most acceptable to (12) least acceptable. The rank-ordering exercise did not produce satisfactory results.[5]

Table 3 summarizes the responses of the 14 construction industry representatives (10 representing employers and 4 representing unions) to proposed changes to the Employment Standards Act. A mean score was calculated to determine the acceptableness of each statement. The overall results indicate a majority of the proposed changes were unacceptable (9 statements achieved a mean score of 3.7 or higher).

There was strong opposition to removing the industry's exemption from Part IV and a neutral response to allowing employers to apply for permits in order to schedule employees to work beyond the statutory maximum. Employers felt it would be very unacceptable to remove the industry's exemption (mean = 4.6). The union representatives were neutral about removing the industry exemption (mean = 3.0), yet strongly supported both the use of permits (mean = 1.0) and not allowing work beyond the weekly maximum (mean = 1.25). The latter results, which initially may seem contradictory, reflect the belief that either approach (permits or prohibiting excessively long hours) would regulate long hours, encourage more employment and

TABLE 3 - MEAN ATTITUDES TOWARD MODIFYING THE EMPLOYMENT STANDARDS ACT*

MEAN SCORES		PROPOSED LEGISLATIVE CHANGES
4.1	A.	Removal of the Construction industry's blanket exemption from Part IV of the Act (Hours of Work) with the result that the hours of work of an employee shall not exceed eight in a day or forty-eight in a week unless the Director of the Employment Standards Branch approves a variation in the regular working day or issues a permit authorizing hours of work exceeding the daily and/or weekly maximum.
3.1	B.	Assuming the construction industry is brought under Part IV of the Act and permits would be necessary to work employees beyond the maximum hours (8 in a day and 48 in a week), employees (or their representatives) should be given the opportunity to make submissions when the employer or industry applies for a permit to work employees beyond the maximum hours in the Act.
3.9	C.	The Act should be amended in such a way that there would be no mechanism for permitting hours in excess of the weekly maximum (i.e., eliminate exemptions, permits, etc.).
3.7	D.	The Act should be amended so that averaging was the only mechanism for allowing hours in excess of the weekly maximum (i.e., it would be permissible to work in excess of the maximum in a given week provided the average weekly hours in a two or more week period did not exceed the maximum).
3.3	E.	There is no need to specify maximum hours in the Act. The Act should be amended to simply define a standard (or regular) workday and workweek, after which overtime premiums are required.
3.9	F.	The maximum number of hours of work per week should be reduced from 48 to 44.
3.7	G.	The maximum number of hours of work per week should be reduced from 48 to 40.
3.2	H.	Under the Act, employees may refuse work in excess of 48 hours per week even if an exemption or permit allows the employer to schedule excess hours. The present policy should be extended in the event the maximum weekly hours is reduced.
3.8	I.	Currently overtime payments are required for all hours worked beyond 44 in a week. Overtime should be paid after 40 hours worked in a week.
4.1	J.	The current overtime premium should be increased from time and one half to double time after 44 hours per week.
4.2	K.	The overtime premium should be double time after 40 hours of work per week.
3.9	L.	Workers should be entitled to compensatory time off in lieu of overtime pay.
3.7		Overall mean.

* 1 = very acceptable; 2 = acceptable; 3 = neutral; 4 = unacceptable; and 5 = very unacceptable.

facilitate the entry of younger workers into the labour force in the long run. Union spokespersons felt employees (or employee representatives) should have input into employer applications for permits.

The most negative response to permits involved concerns about excessive regulation, e.g., delays, greater recordkeeping and higher administrative costs. Some employer respondents felt it might be more difficult to get a permit or to work employees as long as they currently do given the public spotlight on hours of work and overtime. It also was suggested that Part IV of the Act would be difficult to enforce because of the proliferation of small firms in the industry, the large number of non-English speaking owners and workers, and the informality of some pay systems (e.g., cash-in-hand-payments). Both employer and union representatives were fearful that new hours of work and overtime standards would be more difficult to enforce among non-union firms and, as a result, could weaken the competitiveness of unionized construction. These concerns were based on the desire of workers to work long hours, the absence of employee organizations to monitor hours in the non-union sector and the "complaints-based" approach to enforcing the Employment Standards Act.

There also was opposition to reducing the maximum weekly hours from 48 to 44 or 40. Although reducing the maximum to 40 hours was less unacceptable than reducing it to 44 hours, this overall result was influenced by a strong preference on the part of union representatives to substantially reduce maximum weekly hours to 40

(mean score was 1.5).[6] There was a neutral response to abandoning the maximum hours concept in favour of adopting a standard work day and workweek (e.g., 8 and 40 hours), after which overtime premiums would be required. Once again, there were differences among groups, with representatives of unions and the roads and sewers and watermains sectors finding it unacceptable (mean = 4.1) and other construction employers finding it moderately acceptable (mean = 2.6). The divergence in employer responses reflects differences in the overtime triggers in general construction (normally 40 hours or less) and roads and sewers and watermains (normally 50 or 55 hours). Abandoning maximum hours was unacceptable to union representatives because they wanted to regulate long hours. Some respondents expressed interest in developing averaging provisions, but most stated they were impractical.[7]

One of the more acceptable legislative changes (although the respondents' mean score was neutral) was to extend the right of employees to refuse work in the event weekly maximum hours were reduced. Union representatives found this acceptable (mean = 1.5), whereas employer representatives found it unacceptable (mean = 3.9). Once again, union representatives saw this as another means to regulate long hours and employers felt that extending workers' rights might limit their ability to schedule overtime work.

Legislative changes that would lower the overtime trigger, increase the overtime premium and provide for compensatory time off in lieu of overtime pay were regarded as unacceptable. Once again, there were marked differences between employer and union

representatives. The employer representatives regarded changes to overtime triggers and premiums as very unacceptable (means of 4.5, 4.9 and 5.0 for statements I, J and K), whereas union representatives found them acceptable (means of 2.0, 2.1 and 2.2 respectively). Conversely, union respondents were far more opposed to providing compensatory time off in lieu of overtime pay (mean = 5.0) than employer representatives (mean = 3.4).

There was general pessimism about creating more employment by restricting overtime. Even union representatives acknowledged that creating extra shifts was not always practical and many tradespersons were in short supply. Similarly, efforts aimed at restricting hours and prohibiting overtime were impractical since workers could moonlight and/or work for other employers. Union representatives felt a higher hourly wage was required to increase the supply of labour. It is worth noting that little emphasis was placed on improving the plight of unemployed construction tradespersons. This may well be the result of the current boom in construction activity in southern Ontario.

Employer representatives expressed similar concerns about creating employment and added other concerns (e.g., it was more cost effective to work overtime than hire new employees). It also was emphasized that piecework pay schemes (in residential work) and the mobility of workers among contractors would make it difficult to regulate overtime hours. In the roads and sewers and watermains sectors, it was felt that modifications to current overtime

regulations might prompt provincial and municipal governments to undertake less work or to contract more of it to non-union firms.

What inferences can be drawn from the interviews? First, construction workers are attracted to longer hours and overtime because they provide income security (i.e., they help to offset the adverse economic effect of frictional, seasonal and cyclical unemployment). Second, the union leaders appear to be more conscious of and more in favour of regulating hours of work and overtime to facilitate worksharing than either rank-and-file members or elected local union business agents. Third, employers have some misgivings about longer hours (e.g., they recognize productivity declines after 8 hours in a day), but maintain that economic and other factors necessitate flexible work scheduling and, in many cases, substantial overtime hours.

RECOMMENDATIONS

In general, we should be modest in our expectations concerning the creation of employment opportunities through legislative changes aimed at regulating hours of work and overtime (Robb and Robb, 1987). This caution is especially appropriate for the construction industry, where workers desire long hours and employers in some sectors regularly schedule long hours. In an industry where skilled tradesmen are in short supply, scheduling of work is subject to the uncertainties of season, weather, delivery of materials and other factors, and there is a heavy investment in capital equipment, overtime may be the most cost-effective way to operate. To this must be added another caution, namely the ability to enforce whatever

legislative changes are introduced. The available evidence suggests there is currently substantial noncompliance with provisions of the Employment Standards Act (Adams, 1986).

Given what seems to be the limited potential for worksharing and the fact that long hours appear to be a permanent fixture of construction employment, what options are available? Three options merit consideration to accommodate the needs of the construction industry and the policy objective of worksharing. Option one calls for maintaining the industry's exemption from Part IV of the Act. The current system gives employers substantial flexibility of scheduling; is easy to administer; imposes few; if any, enforcement problems; and represents a system with which the industry is comfortable. However, this approach does not advance the policy objective of worksharing.

Option two would remove the industry's exemption and bring it under the present or a modified version of Part IV of the Act. Under this scheme, individual employers, the industry, or sectors of the industry, could apply for permits to work employees beyond the weekly maximum of 48 hours. The needs of the industry could be met provided the permits were not too difficult to obtain and they were not unduly restrictive. To some extent, worksharing probably could be facilitated by allowing employee representatives to participate in permit applications and by monitoring permits to ensure compliance.

There are two shortcomings associated with this approach. First, if the permit system simply sanctioned existing work

scheduling arrangements, it would have little or no effect on worksharing. Second, and perhaps more significantly, the ability to limit hours through the use of permits will ultimately depend on whether they are complied with. The evidence indicates a substantial compliance gap. Special permits have been issued for 1,000,000 hours of work and yet, it is estimated that an additional 23,000,000 hours are "being worked that require special permits under the current legislation but for which special permits have not been issued" (Robb and Robb, 1987). When this is considered along with other enforcement problems, e.g., the rapid decline in routine inspections conducted by the Employment Standards Branch,[8] and the relatively few complaints that are associated with long hours, the efficacy of option two is questionable.[9]

A third option requires changing Part IV by abandoning maximum hours in favour of establishing a standard workweek, e.g., 40 or 44 hours. Under this scheme all hours worked in excess of the standard workweek would be compensated by an overtime premium. In this regard, Parts IV and VI of the Act could be combined. Such an approach would preserve employer flexibility, is relatively easy to administer and is already the norm in most of the industry. It is recognized this would impose higher labour costs in the roads and sewers and watermains sectors by lowering the overtime trigger. These sectors also would face larger labour cost increases in the event the overtime premium was increased.[10]

It is doubtful that option three would promote worksharing. In the roads and sewers and watermains sectors, long hours reflect the

need to achieve cost effectiveness. The nature of the work, e.g., remote locations and confined work areas, also impedes substitution of new employees for long hours. In most other unionized sectors of construction activity, the overtime trigger and premiums are more generous than found in the Act. Unless there was a substantial increase in the overtime premium, it is unlikely worksharing would grow. The potential for achieving worksharing through alteration of overtime provisions appears greater (but not great) for less skilled and non-union employees working in the residential sector and in rural localities.

In considering the alternatives for the construction industry, my preference is option three. The Employment Standards Act and the Regulations create so many exemptions and exceptions that it is difficult to detect a coherent standard respecting hours of work and overtime. Suffice it to say that it is impossible to ignore the uniqueness of construction e yment. Whether the industry's exemption from Part IV or its special treatment under Part VI is solely a function of its uniqueness begs the point. The fact is the industry acquired a special status under the Act. Over the years, the industry has grown accustomed to the regulatory scheme and today embraces it as if it were a property right. It does not seem appropriate to dismantle this arrangement in the absence of strong evidence that worksharing can be achieved.

Accordingly, and as summarized above, construction is probably one of those sectors where the potential for worksharing is benign. Given current problems of noncompliance with the Act, there seems to

be little justification for establishing a cumbersome regulatory scheme which would be difficult if not impossible to enforce. Option three provides simplicity and establishes an equitable minimum standard. For many years, the needs of the roads and sewers and watermains sectors have been recognized in Ontario and other Canadian jurisdictions. Given the limited potential for worksharing in these sectors, I am persuaded the higher overtime triggers are not inappropriate. However, serious consideration should be given to a higher overtime premium for workers required to work in excess of 50 or 55 hours in a week. This option would allow employers to continue to work employees long hours, but would impose a higher marginal cost. As well, employees could continue to exercise a choice between fewer or longer hours. This could be phased in to avoid short-run adjustment problems. Enforcement should be increased to ensure that those overtime regulations adopted to encourage even modest worksharing are complied with. In particular, routine inspections should be greatly increased to reduce the compliance gap.

SUMMARY

- The construction industry is extremely sensitive to the level and rate of investment. In 1985, public spending accounted for 31 per cent of total construction activity. Government spending accounts for over 75 per cent of total expenditures on road and sewers construction.

- According to the 1985 Labour Force Survey, construction workers averaged 39.9 hours per week (including one hour of overtime

per week). While the incidence and average duration of overtime was not substantial in absolute or relative terms, construction workers who worked overtime tended to work longer overtime hours than the average Canadian worker. This reflected the cyclical, seasonal and frictional nature of construction work and the scheduling requirements of the industry.

- The construction industry has been exempted from Part IV of the Employment Standards Act and special overtime provisions exist in two sectors of the industry. In roadbuilding and sewers and watermains construction, the time and one-half overtime rate is applicable after 50 or 55 hours in a week. Hours of work and overtime in construction also are regulated by federal and provincial fair wage and hours schedules which apply to government-financed projects.

- The exemption from Part IV of the Act is in recognition of the industry's unique characteristics (e.g., seasonal), the need for flexible work scheduling, and the high level of unionization and collective bargaining coverage. As for the special overtime provisions for the roadbuilding and sewers and watermains sectors, these reflect the prevailing overtime provisions found in collective agreements, the greater sensitivity of these sectors to season and weather, and the fact that governments finance most of this work.

- In many Canadian jurisdictions, special overtime provisions exist for the construction industry, most notably in the roads sector.

- Collective bargaining has not established a complex web of rules governing hours of work and overtime. Most collective agreements establish the standard daily and weekly hours and specify the appropriate overtime premium for excess hours and work on Saturdays, Sundays and holidays. This probably accounts for the infrequency of grievance arbitration in this area.

- The 40-hour workweek is the most common arrangement in both the ICI and residential sectors, although many areas in the ICI sector have a standard workweek of less than 40 hours. In the roads and sewers and watermains sectors, 50 or more hours per week was reported in 95 per cent of the geographic areas surveyed.

- Overtime premiums were highest in the ICI sector; in 59 per cent of the geographic areas, double time is required for hours beyond the daily and weekly standard. In other sectors, time and one-half was the normal overtime premium.

- Interviews conducted with construction industry representatives revealed that: (1) construction workers are attracted to longer hours and overtime; (2) employers want to maintain the status quo and are opposed to changes which would limit their

flexibility in scheduling work; and (3) union officials favour greater regulation of hours of work and overtime to facilitate worksharing. In general, there was pessimism over the potential for creating additional employment through restrictions on overtime.

NOTES

1. The average duration of construction overtime exceeded the all industry average by 0.7 hours per week and ranked third behind agriculture and other primary industries.

2. The averaging provisions for roadbuilding found in the Regulation 285 only form part of the schedule for the provincial zone.

3. For example, not all of the trades under consideration work in each sector (e.g., electricians are not found in the roads sector). Rather than trying to compare the same trade across sectors, we opted for including a range of trades by skill and wage levels. It should also be noted that many province-wide agreements in the industrial, commercial and institutional sector do not contain standard hours of work and overtime provisions. These issues often are specified in local area appendices and may vary from one geographic zone to another. Accordingly, the unit of analysis is the geographic area rather than the collective agreement.

4. The seven groups included: the Ontario Roadbuilders Association, the Pipeline Contractors Association of Canada, the Ontario Homebuilders' Association, the Construction Employers Co-ordinating Council of Ontario, the Council of Ontario Construction Associations, the Provincial Building and Construction Trades Council of Ontario, and the Sewers and Watermains Contractors Association.

5. The majority of respondents were unable to make such fine discriminations and as a result, the same ranking was given to more than one statement. With the advantage of hindsight, it would have been preferable to have designed a shorter list of proposed legislative changes.

6. In contrast, the mean score on statement G for employers was 4.6.

7. Not only would averaging require more bookkeeping, but some construction workers' hours include show-up and travel time. In the case of pipeline workers, travel can comprise as much as 3 hours per day.

8. The number of routine inspections declined from 1,304 in fiscal year 1980/81 to 102 in fiscal year 1985/86 (Ontario Ministry of Labour, 1980-81 and 1985-86).

9. Although other options for regulating long hours exist, e.g., averaging provisions and prohibiting all hours beyond the weekly maximum, these alternatives would be very difficult to enforce.

10. Overtime provisions could be varied in many ways. For example, multiple triggers and premiums could be employed such as a time-and-one-half rate after 44 hours and double-time after 50 hours.

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APPENDIX A

TABLE A1: COLLECTIVE AGREEMENT PROVISIONS, ICI SECTOR, SCHEDULED DAILY HOURS, AND WEEKLY HOURS

DAILY HOURS	Number of Agreements	%	WEEKLY HOURS	Number of Agreements	%
No provision	0	0.0	36.0-37.4 hours	31	21.5
7.5 hours	9	6.3	37.5 hours	11	7.6
8.0 hours	122	84.7	38 hours	1	0.7
8.5-9.0 hours	13	9.0	40 hours	90	62.5
10 hours	0	0.0	40.1-44 hours	11	7.6
12 hours	0	0.0	44.1-48 hours	0	0.0
			50 hours	0	0.0
			55 hours	0	0.0
TOTAL	144	100.0		144	100.0

TABLE A2: COLLECTIVE AGREEMENT PROVISIONS, RESIDENTIAL SECTOR, SCHEDULED DAILY HOURS, AND WEEKLY HOURS

DAILY HOURS	Number of Agreements	%	WEEKLY HOURS	Number of Agreements	%
No provision	1	1.8	36.0-37.4 hours	1	1.8
7.5 hours	5	8.9	37.5 hours	5	8.9
8.0 hours	39	69.6	38 hours	0	0.0
8.5-9.0 hours	11	19.6	40 hours	39	69.6
10 hours	0	0.0	40.1-44 hours	11	19.6
11 hours	0	0.0			
12 hours	0	0.0	44.1-48 hours	0	0.0
			50 hours	0	0.0
			55 hours	0	0.0
TOTAL	56	100.0		56	100.0

TABLE A3: COLLECTIVE AGREEMENT PROVISIONS, ROADS SECTOR, SCHEDULED DAILY HOURS, AND WEEKLY HOURS

DAILY HOURS	Number of Agreements	%	WEEKLY HOURS	Number of Agreements	%
No provision	14	37.8	36.0-37.4 hours	0	0.0
7.5 hours	0	0.0	37.5 hours	0	0.0
8.0 hours	0	0.0	38 hours	0	0.0
8.5-9.0 hours	0	0.0	40 hours	1	2.7
10 hours	11	29.7	40.1-44 hours	0	0.0
11 hours	7	18.9			
12 hours	5	13.6	44.1-48 hours	0	0.0
			50 hours	16	43.2
			55 hours	20	54.1
TOTAL	37	100.0		37	100.0

TABLE 4A: COLLECTIVE AGREEMENT PROVISIONS, SEWERS AND WATERMAINS SECTOR, SCHEDULED DAILY HOURS, AND WEEKLY HOURS

DAILY HOURS	Number of Agreements	%	WEEKLY HOURS	Number of Agreements	%
No provision	6	17.1	36.0-37.4 hours	0	0.0
7.5 hours	0	0.0	37.5 hours	0	0.0
8.0 hours	0	0.0	38 hours	0	0.0
8.5-9.0 hours	0	0.0	40 hours	0	0.0
10 hours	21	60.0	40.1-44 hours	0	0.0
11 hours	3	8.6			
12 hours	5	14.3	44.1-48 hours	2	5.7
			50 hours	31	88.6
			55 hours	2	5.7
TOTAL	35	100.0		35	100.0

TABLE 5A: COLLECTIVE AGREEMENT PROVISIONS, ICI SECTOR
OVERTIME PREMIUM, INITIAL AND EXCESSIVE PERIODS

OVERTIME PREMIUM INITIAL OVERTIME PERIOD	Number of Agreements				
	DAILY	WEEKLY	SATURDAY	SUNDAY	HOLIDAY
Time and 1/2	59	59	-	-	-
Double-time	85	85	139	144	144
Time-in-lieu	-	-	-	-	-
Other	-	-	-	-	-
No provision	-	-	5	-	-
TOTAL	144	144	144	144	144

OVERTIME PREMIUM EXCESSIVE OVERTIME PERIOD	
Double time <2 hours	11
Double time 2-4 hours	32
Double time >4 hours	-
Time-in-lieu	-
Varies	-
No provision	-
TOTAL	43

TABLE A6: COLLECTIVE AGREEMENT PROVISIONS, RESIDENTIAL SECTOR, OVERTIME PREMIUM, INITIAL AND EXCESSIVE PERIODS

OVERTIME PREMIUM INITIAL OVERTIME PERIOD	Number of Agreements DAILY	WEEKLY	SATURDAY	SUNDAY	HOLIDAY
Time and 1/2	37	37	17	3	3
Double-time	19	19	39	53	53
Time-in-lieu	-	-	-	-	-
Other	-	-	-	-	-
No provision	-	-	-	-	-
TOTAL	56	56	56	56	56

OVERTIME PREMIUM EXCESSIVE OVERTIME PERIOD	
Double time <2 hours	-
Double time 2-4 hours	7
Double time >4 hours	2
Time-in-lieu	-
Varies	-
No provision	-
TOTAL	9

TABLE A7: COLLECTIVE AGREEMENT PROVISIONS, ROADS SECTOR
OVERTIME PREMIUM, INITIAL AND EXCESSIVE PERIODS

	Number of Agreements				
OVERTIME PREMIUM INITIAL OVERTIME PERIOD	DAILY	WEEKLY	SATURDAY	SUNDAY	HOLIDAY
Time and 1/2	22	22	22	0	5
Double-time	0	0	1	37	32
Time-in-lieu	-	-	-	-	-
Other	1	1	-	-	-
No provision	14	14	14	-	-
TOTAL	37	37	37	37	37

OVERTIME PREMIUM EXCESSIVE OVERTIME PERIOD	Number of Agreements
Double time <2 hours	-
Double time 2-4 hours	-
Double time >4 hours	-
Time-in-lieu	-
Varies	-
No provision	-
TOTAL	0

TABLE A8: COLLECTIVE AGREEMENT PROVISIONS, SEWERS AND WATERMAINS SECTOR, OVERTIME PREMIUM, INITIAL AND EXCESSIVE PERIODS

	Number of Agreements				
OVERTIME PREMIUM INITIAL OVERTIME PERIOD	DAILY	WEEKLY	SATURDAY	SUNDAY	HOLIDAY
Time and 1/2	28	28	23	0	5
Double-time	0	0	3	35	30
Time-in-lieu	0	0	0	-	-
Other	1	1	0	-	-
No provision	6	6	9	-	-
TOTAL	35	35	35	35	35

OVERTIME PREMIUM EXCESSIVE OVERTIME PERIOD	
Double time <2 hours	-
Double time 2-4 hours	-
Double time >4 hours	-
Time-in-lieu	-
Varies	-
No provision	-
TOTAL	0

APPENDIX B

Hours of Work and Overtime in Construction: Employment Standards Act Preferences

Listed below are a number of possible changes to the Employment Standards Act. Please indicate in the blank space provided whether such proposed changes are:

(1) very acceptable
(2) acceptable
(3) neutral
(4) unacceptable
(5) very unacceptable

____ A. Removal of the construction industry's blanket exemption from Part IV of the Act (Hours of Work) with the result that the hours of work of an employee shall not exceed eight in a day or forty-eight in a week unless the Director of the Employment Standards Branch approves a variation in the regular working day or issues a permit authorizing hours of work exceeding the daily and/or weekly maximum.

____ B. Assuming the construction industry is brought under Part IV of the Act and permits would be necessary to work employees beyond the maximum hours (8 in a day and 48 in a week), employees (or their representatives) should be given the opportunity to make submissions when the employer or industry applies for a permit to work employees beyond the maximum hours in the Act.

____ C. The Act should be amended in such a way that there would be no mechanism for permitting hours in excess of the weekly maximum (i.e., eliminate exemptions, permits, etc.)

____ D. The Act should be amended so that averaging was the only mechanism for allowing hours in excess of the weekly maximum (i.e., it would be permissible to work in excess of the maximum in a given week provided the average weekly hours in a two or more week period did not exceed the maximum).

____ E. There is no need to specify maximum hours in the Act. The Act should be amended to simply define a standard (or regular) workday and workweek, after which overtime premiums are required.

____ F. The maximum number of hours of work per week should be reduced from 48 to 44.

____ G. The maximum number of hours of work per week should be reduced from 48 to 40.

____ H. Under the Act, employees may refuse work in excess of 48 hours per week even if an exemption or permit allows the employer to schedule excess hours. The present policy should be extended in the event the maximum weekly hours is reduced.

____ I. Currently overtime payments are required for all hours worked beyond 44 in a week. Overtime should be paid after 40 hours worked in a week.

____ J. The current overtime premium should be increased from time and one half to double time after 44 hours per week.

____ K. The overtime premium should be double time after 40 hours of work per week.

____ L. Workers should be entitled to compensatory time off in lieu of overtime pay.

Rank order the following statements in terms of the degree of acceptability (the number 1 should indicate the most acceptable statement and the number 12 should indicate the least acceptable statement).

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